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**IN THE
COURT OF APPEALS OF INDIANA**

M.J.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0702-JV-126
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Geoffrey Gaither, Magistrate
Cause No. 49D09-0608-JD-003068

October 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

M.J. appeals his adjudication as a delinquent child for committing an act that would be auto theft as a Class D felony if committed by an adult and unlawful entry of a motor vehicle as a Class B misdemeanor if committed by an adult. Specifically, M.J. contends that the evidence is insufficient to support the juvenile court's true findings, that the evidence is insufficient to support the juvenile court's order requiring him to pay \$1519.15 in restitution, and that the juvenile court abused its discretion by failing to inquire into his ability to pay restitution. Finding that the evidence is sufficient to support the court's true findings and order requiring him to pay \$1519.15 in restitution and that the court did not abuse its discretion because it did inquire into his ability to pay, we affirm the juvenile court's adjudication of M.J. as a delinquent child.

Facts and Procedural History

On August 12, 2006, Willie Mundy ("Mundy") was driving his 1990 red Oldsmobile Cutlass in the area of 11th Street and Keystone Avenue in Indianapolis, Indiana. While driving, Mundy's vehicle "started putting as if it were out of gas" Tr. p. 18. Mundy pulled to the side of the road to call and arrange for a tow truck. After pulling over, Mundy exited the vehicle to use a pay phone but left the car running. While facing away from his vehicle, Mundy heard the engine of his car rev up. Mundy turned around and saw a young man drive away in his vehicle. Mundy then called 911.

Approximately six hours after Mundy reported his vehicle stolen, Indianapolis Police Department Officer Chris Edwards ("Officer Edwards") received a radio dispatch that a caller was following a red Oldsmobile Cutlass the caller knew had been stolen.

The control operator confirmed that the vehicle had been reported as stolen. Thereafter, Officer Edwards observed the vehicle exit an alley and turn eastbound onto 13th Street. The vehicle then turned southbound onto Dearborn Street. Officer Edwards stopped the vehicle on Dearborn just south of 13th Street. After confirming that the vehicle was stolen, Officer Edwards arrested the driver, M.J. Soon thereafter, Mundy arrived at the scene and confirmed that the vehicle was his. Mundy soon discovered that the driver-side door handle had been broken and a tire was nearly flat. Additionally, when Mundy drove his vehicle away from the scene, he heard loud popping noises and the car pulled to the left, which it did not do before it was stolen.

The State filed delinquency charges against M.J. alleging Count I, Auto Theft as a Class D felony,¹ and Count II, Unlawful Entry of Motor Vehicle as a Class B misdemeanor.² A Denial Hearing was held, and Mundy testified that he never gave M.J. permission to drive or even enter his vehicle. M.J., on the other hand, testified that he rented the vehicle from a friend for twenty dollars. At the conclusion of the denial hearing, the juvenile court found both allegations of delinquency true, determined M.J. to be a delinquent child, and released M.J. on probation pending his disposition hearing. Immediately preceding his disposition hearing, M.J. and the State entered into a plea agreement whereby M.J. admitted to violating his release conditions in return for which the State recommended a suspended commitment. At his disposition hearing, the juvenile court awarded wardship of M.J. to the Indiana Department of Correction for

¹ Ind. Code § 35-43-4-2.5(b)(1).

² Ind. Code § 35-43-4-2.7(d)(1)(2).

housing in any correctional facility for children, suspended the commitment, and placed M.J. on probation, with special conditions.

Thereafter, the court held a restitution hearing where Mundy testified that he received two estimates for the repair of his vehicle. The lower of the two estimates was for \$1519.15 and only included repairs for damage that occurred after M.J. took his vehicle. At the conclusion of the restitution hearing, the court ordered M.J. to pay \$1519.15 in restitution and further ordered M.J. to participate in a community service restitution work program. M.J. now appeals.

Discussion and Decision

M.J. raises two issues on appeal. First, he contends that the evidence is insufficient to support the true findings that he committed auto theft and unauthorized entry of a motor vehicle. Second, he argues that the evidence is insufficient to support the court's order requiring him to pay \$1519.15 in restitution and that the court abused its discretion by failing to inquire into his ability to pay when ordering restitution.

I. Sufficiency of the Evidence

M.J. argues that the evidence is insufficient to sustain the court's true findings that he committed auto theft and unauthorized entry of a motor vehicle. In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor assess the credibility of the witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). Instead, we look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.* "When the

State seeks to have a juvenile adjudicated to be delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of that crime beyond a reasonable doubt.” *Al-Saud v. State*, 658 N.E.2d 907, 908 (Ind. 1995).

To prove that M.J. committed auto theft as charged in this case, the State had to show that M.J. knowingly or intentionally exerted unauthorized control over the motor vehicle of Mundy, with the intent to deprive Mundy of its value or use. *See* Ind. Code § 35-43-4-2.5(b)(1). Theft may be supported by circumstantial evidence. *J.B. v. State*, 748 N.E.2d 914, 916 (Ind. Ct. App. 2001). “The unexplained possession of recently stolen property may support an inference of guilt of theft of that property.” *Id.* “Possession remains ‘unexplained’ if the trier of fact rejects the defendant’s explanation.” *Id.*

To prove that M.J. committed unlawful entry of a motor vehicle as charged in this case, the State had to show that M.J. entered a motor vehicle knowing that he did not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle, and M.J. did not have a contractual interest in the motor vehicle. *See* Ind. Code § 35-43-4-2.7(d).

Here, the evidence presented at trial established that a young man stole Mundy’s vehicle. Approximately six hours after the vehicle was stolen, police stopped fourteen-year-old M.J., who was driving the stolen vehicle. The juvenile court rejected M.J.’s claim that he rented the vehicle from a friend for twenty dollars, and Mundy testified that he never gave M.J. permission to drive or even enter his vehicle. M.J.’s argument that the evidence is insufficient because Mundy could not identify who took his vehicle, that there was no corroborating evidence to suggest M.J. had stolen the vehicle or that his

testimony, namely, that he was merely renting the vehicle, was untrue is merely a request that we reweigh the evidence, which we will not do. The evidence is sufficient to support the juvenile court's true findings that M.J. committed auto theft and unauthorized entry of a motor vehicle.

II. Restitution

M.J. additionally argues that the evidence is insufficient to support the court's order requiring him to pay \$1519.15 in restitution and that the court abused its discretion by failing to inquire into his ability to pay restitution.

A. Sufficiency of the Evidence

M.J. argues that the evidence is insufficient to support the court's restitution order. Specifically, M.J. contends, "The trial court should have limited the restitution only to repairing the door handle and the tire. The car pulling to right^[3] and the subsequent needed repairs of struts, ball joints, tie rod and alignment lacked evidence as having been caused by a direct and immediate result of M.J. driving the vehicle." Appellant's Br. p. 8. We cannot agree. As earlier stated, in reviewing a claim of insufficient evidence, we neither reweigh the evidence nor assess the credibility of the witnesses. *Love*, 761 N.E.2d at 810. Rather, we look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Id.*

Indiana Code § 31-37-19-5(b)(4) provides, in pertinent part, "The juvenile court may . . . [o]rder the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing." At trial,

³ The record reflects that Mundy's vehicle was pulling to the left. *See* Tr. p. 40.

Mundy testified that his vehicle pulled to the left after he retrieved it from M.J. Additionally, Mundy testified that he received a repair estimate of \$1519.15, which only included repairs for the damage done after M.J. took his vehicle. This is reasonable evidence of Mundy's loss. M.J.'s argument that the evidence is insufficient because "the subsequent needed repairs of struts, ball joints, tie rod and alignment lacked evidence as having been caused by a direct and immediate result of M.J. driving the vehicle[.]" Appellant's Br. p. 8, is merely a request that we reweigh the evidence, which we will not do. The evidence is sufficient to support the juvenile court's order requiring M.J. to pay \$1519.15 in restitution.

B. Ability to Pay

Finally, M.J. maintains that the juvenile court abused its discretion because it "made no inquiry into [his] ability to pay." Appellant's Br. p. 6. A restitution order is reviewed for an abuse of discretion. *Crawford v. State*, 770 N.E.2d 775, 781 (Ind. 2002). An abuse of discretion occurs when the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Palmer v. State*, 704 N.E.2d 124, 127 (Ind. 1999). As a general rule, when restitution is ordered as a condition of probation, the trial court must inquire into the defendant's ability to pay in order to prevent indigent defendants from being imprisoned because of their inability to pay. *M.L. v. State*, 838 N.E.2d 525, 528 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*.

Specifically, M.J. contends that the juvenile court abused its discretion by not inquiring into his ability to pay before ordering him to pay \$1519.15 in restitution. We

disagree. “In order to impose restitution, the trial court must consider the defendant’s ability to pay which includes such factors as the defendant’s financial information, health, and employment history.” *Champlain v. State*, 717 N.E.2d 567, 570 (Ind. 1999). A trial court may make a proper inquiry by such actions as reviewing the pre-sentence report and questioning witnesses. *Laker v. State*, 869 N.E.2d 1216, 1221 (Ind. Ct. App. 2007).

Here, the trial court did inquire into M.J.’s ability to pay. Contained within the record is a pre-dispositional report, which provided the juvenile court with M.J.’s financial information and employment status. Additionally, the court ordered M.J. to partially pay this restitution through his participation in a community service restitution work program. Thus, the trial court’s inquiry into M.J.’s financial information and employment status, coupled with the court’s order that he partially pay through his participation in a community service restitution work program, sufficiently shows that the court inquired into his ability to pay when ordering restitution. Consequently, the juvenile court did not abuse its discretion in this regard.

Affirmed.

BAKER, C.J., and BAILEY, J., concur.